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(2)

No. 09-1392

In The

Supreme Court of the United States

DON H. HAYCOCK,

Petitioner,

v.

NORMAN L. EPSTEIN, Justice of the Second Appellate District, STEVEN C. SUZUKAWA, Justice of the Second Appellate District, NORA M. MANELLA, Justice of the Second Appellate District, and STATE OF CALIFORNIA,

Respondents.

On Petition For A Writ Of Certiorari To The Ninth Circuit Court Of Appeals

SUPPLEMENTAL BRIEF

DON H. HAYCOCK, Attorney in pro se
DON H. HAYCOCK AND ASSOCIATES
7321 Westlawn Avenue
Los Angeles, California 90045
(310) 641-3921
dulcilobo@yahoo.com

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This supplemental brief is submitted under Rule 15-8, that provides: "Any party may file a supplemental brief at any time while a writ for certiorari is pending, calling attention to . . . other intervening matters not available at the time of the party's last filing."

On June 3, 2010, Ninth Circuit Justice Kozinski denied Petitioner's complaint of Judicial Misconduct, that charged the Federal District Court Judge and Magistrate, with refusal to consider Petitioner's statute of limitations defense. Specifically, the lawsuit was filed 19-months after California's one-year statute of limitations barred its filing.

California trial judge Gerald Rosenberg refused to consider the statute of limitations violation by repeatedly rejecting Petitioner's *demurrer* that charged this violation. He ruled the answer to the complaint superceded, and nullified, the *demurrer*, contrary to California statutory and case law.

Second Appellate Districts Justices Epstein, Suzukawa and Manella, acknowledged the time-limitations violation. Then to sustain the judgment, they fabricated an *equity defense* composed of fabricated facts and fabricated law. The California Supreme Court affirmed Appellate Justices fabricated *equity defense*.

Second Appellate District Justices abandoned the *equity defense* in the Federal District Court. They claimed having "absolute judicial immunity" and, they could not be sued in federal court under the

Rooker-Feldman principle. Petitioner argued against these belated defenses, while concurrently charging violation of the statute of limitations. They refused to engage this time-limitations violation by not responding to Petitioner's pleadings charging this violation; they only addressed their two belated defenses. District Court Judge and Magistrate ratified and advanced this selective defense, while being intentionally silent on the time-limitations violation. They further refused to respond to this defense in pleadings, by cancelling scheduled hearings without notice, and rendering judgment only on the "Report and Recommendations" of Magistrate Mumm that did not address this defense. It was for this reason, and this reason alone, that the complaint of judicial misconduct was filed against the Judge and Magistrate of this Federal District Court.

California Appellate justices did not answer this Petition for Certiorari to the U.S. Supreme Court, so their only defenses are "*absolute judicial immunity*" and the *Rooker-Feldman* doctrine. Petitioner has extensively argued they are not viable under the facts of this case.

Even if Appellate Justices could prevail with either, or both, of these defenses – then, either, or both of these defenses, *could only proceed to a resolution if the one-year statute of limitations had not been violated. Violation of this statute, which is not disputed, terminated this lawsuit 19-months before it was filed. This is the law of this case.*

This case presents an interesting parallel to law cases at the time of Lord Coke. Then the practice of defense lawyers was to first create a sham defense. And then retain "straw men" to swear in court to the truthfulness of the sham. It was for the judge to ascertain the true facts, on which he would base his decision. In California, Second Appellate District Justices serve as "straw men" to trial court judges to ensure their sham decisions prevail. Then, California Supreme Court Justices serve as "straw men" to the California Appellate Justices to ensure their sham decision prevails. Followed by Federal Court District judges to ensure California Supreme Court decisions prevail. The only difference, in Lord Coke's time, the lawyers created the sham defenses. Now in California, it is the judges that create the sham defenses.

Petitioner's response to Judge Kozinski's order is the attachment to this supplemental brief.

Respectfully submitted,

DON H. HAYCOCK, Attorney in pro se
DON H. HAYCOCK AND ASSOCIATES
7321 Westlawn Avenue
Los Angeles, California 90045
(310) 641-3921
dulcilobo@yahoo.com

Law Office of
DON H. HAYCOCK & ASSOCIATES
a Professional Corporation
7321 Westlawn Avenue
Los Angeles, CA 90045

Tel. 310/641-3921
Fax. 310/641-6638
dulcilobo@yahoo.com

July 8, 2010

Clerk, Ninth Circuit Court of Appeals
P.O. BOX 193939
SAN FRANCISCO, CALIFORNIA 94119-3939

Re: *Order of Chief Judge Kozinski, dated June 3, 2010, dismissing complaints of judicial misconduct against Judge Florence Marie Cooper and Magistrate Frederick F. Mumm, nos. 09-90210 and 09-90280*

Encl. *Petition for Writ of Certiorari to United States Supreme Court, Haycock, Petitioner v. Norman L. Epstein, Steven C. Suzukawa and Nora Manello, Respondents*

To: Judicial Council of the Ninth Circuit:

This petition to the Judicial Council is brought under Rule 18(b) of Rules Governing Judicial Conduct, to review Chief Judge Kozinski's order of June 3, 2010 dismissing the above complaints against Judge Florence Marie Cooper and Magistrate Frederick F. Mumm for judicial misconduct under Federal

District Case No. CV08-01531FMC(FFM). The misconduct charged, is their refusal to acknowledge, and rule, that the statute of limitations violation, rejected in the trial court, rendered this lawsuit against petitioner moot, causing petitioner to appeal this violation to the Ninth Circuit, that was assigned Case No. 08-56150.

Judge Cooper is now deceased, and the complaint against her is moot. However, her demise is independent of the complaint against Magistrate Mumm, whose actions she authorized and approved, including her final order summarily approving and adopting, *in toto,* Mumm's Report and Recommendations that she designated the Judgment. It included only two defenses, raised for the first time by the Respondents, Second Appellate District Justices: "absolute judicial immunity" and defense under the *Rooker-Feldman* principle. Judge Cooper's judgment failed to address the only issue relevant to this lawsuit, *the statute of limitations* bar. This lawsuit was filed thirty-one (31) months after petitioner voluntarily dismissed, with prejudice, the underlying lawsuit, on which this malicious prosecution action depended – *constituting a violation of California's one-year statute of limitations*. Appellate Justices do not dispute this violation.

The complaint of judicial misconduct charge Magistrate Mumm, and Judge Cooper, with *intentionally disregarding* violation of California's one-year statute of limitations. Judge Kozinski's order, dismissing this complaint of judicial misconduct, mistakenly does not

acknowledge that violation of this statute, barred this lawsuit *ab initio*.

The genealogy of this lawsuit: Petitioner concurrently filed a *demurrer* and an answer to this lawsuit in Judge Gerald Rosenberg's Superior Court, Judge Rosenberg ruled the answer took preference over the *demurrer* – rejected the *demurrer* and imposed financial sanctions on petitioner. He rejected three subsequent motions to act on the *demurrer* and dismiss the lawsuit because it was time barred. Each motion was denied and additional sanctions imposed for a total of $12,397. Judge Rosenberg refused to acknowledge, that concurrently pleading a *demurrer* and answer is an authorized practice under the California Code of Civil Procedure, section 472a, that states: "A demurrer is not waived by an answer filed at the same time." *Certiorari* to California's Second Appellate District to compel Judge Rosenberg comply with section 472a, was summarily rejected without comment.

The judgment rendered against petitioner in Judge Rosenberg's Court was appealed to the California Second Appellate District, and became before defendant Appellate Justices Norman Epstein, Steven Suzukawa and Nora Manella. The issue being appealed was Judge Rosenberg's refusal to act on the *demurrer* and dismiss the lawsuit. These Justices acknowledged the lawsuit violated the one year statute of limitations.

Then, *to sustain the judgment,* these Appeliate Justices created – with *fabricated facts* and *fabricated law – an equity defense,* for the original plaintiff. With these fabrications, they asserted petitioner caused this plaintiff, a Harvard trained attorney, to believe a voluntary dismissal had been appealed, and that caused him to believe this appeal tolled the one-year statute of limitations. Their ruling:

> "Although Haycock (then defendant) is correct that no appeal maybe taken from a voluntary dismissal of an action, that is not the controlling factor. When Haycock filed the notice of appeal from the voluntary dismissal, he caused McMullen to believe that the limitations period was *tolled while the appeal was pending.* Haycock, accordingly, *is equitably estopped* to "plead the very delay caused by his course of conduct as a defense to the action when brought. [citations]" *Lantz v. Centex Homes,* 31 Cal.4th 363 (2003).'"

To prove these fabrications, Appellant (and defendant) compiled sets of all documents filed in Judge Rosenberg's court, consisting of 352 pages, and provided sets to Appellate Justices, Judge Rosenberg, and, Federal District Judge Florence-Marie Cooper. *No where in any of these documents is there any mention, of the following fabrication published, and relied on, by these Appellate Justices to support their* ***equity defense***:

> " . . . notice of appeal from the voluntary dismissal, . . . [that] caused McMullen to believe

> the limitation period was tolled . . . while 'the appeal was pending . . . " (There was no appeal of the voluntary dismissal)

The reason for their fabrications are both obvious and outrageous: These Appellate Justices *could not locate any law* wherein an *equity defense* – from a California appellate court – extended a statute of limitations. California's Constitution and Supreme Court decisions forbid this practice of its appellate courts. So these Appellate Justices fabricated the *facts* and *law* of the *Lantz* decision. *In* ***Lantz*** *the trial court denied the* ***equity defense****, and the California Supreme court affirmed the trial court's decision – that denied the* ***equity defense****.*

Lantz v. Centrex Homes held that the *equity defense,* asserted by *Lantz – did not extend the statute of limitation.* The California Supreme Court *in Lantz* ruled the 10-year statute of limitations *could not be extended* – affirming the trial court's denial of the *equity defense,* by ruling;

> "Hence, plaintiffs have pled no facts indicating that defendants' conduct directly prevented them from filing their suit on time . . . plaintiffs' have failed to plead facts that would equitably estop defendants from asserting this limitations period . . . " (page 673)

Appellate Justices' *equity defense* is an EDICT imposed without *facts, law,* and the *jurisdiction* to render this *equity decision.* It is void and subjects

these Justices to personal liability. They had absolutely *no jurisdiction*, to render it.

Also, their fabrications are criminal acts under the California Criminal Code, section 134, Preparing False Evidence; and, Title 18, Part I Crimes, of the United States Criminal Code that also makes the preparation, and production, of false evidence a felony.

After the California Supreme Court summarily denied *certiorari* without comment. Petitioner appealed to the Federal District Court under the Fourteenth Amendment.

Appellate Justices answered this appeal with two defenses: They claimed having "absolute judicial immunity" for their fabricated *equity defense*. And, Petitioner's appeal to District Court was barred under the *Rooker-Feldman* principle. They abandoned their *equity defense*. (*See*: Included Petition for Writ of Certiorari, to U.S. Supreme Court, pages 6 to 9, inclusive.)

Appellate Justices failed to make any showing how the *Rooker-Feldman* defense was applicable to the undisputed facts. They only cited case decisions without addressing application of the undisputed facts to the decisions.

However, assuming Appellate Justices could legally plead either, or both, of these defenses; and prevail – ***(then, either, or both of these defenses, could only proceed to a resolution if the one-year***

statute of limitations had not been violated. Violation of this statute terminated this lawsuit at the trial court 19-months before it was filed. This proof has repeatedly been presented to the Ninth Circuit – and has not been disputed. Its judges refuse to rule on this issue.

Judge Rosenberg's acceptance of the filing of this lawsuit *had no legal affect – is was time barred ab initio.* ***A fortiori****, Judge Rosenberg had* ***no jurisdiction*** *to proceed on this lawsuit.*

Judge Lozinski's Ruling

> *"Complainant's charge against the magistrate judge relate directly to the merits of the judge's ruling and must be dismissed."*

Federal District Judge Cooper granted Judgment based only on "the findings, conclusions and recommendations of Magistrate Mumm," that she totally "adopted." She claims to have "reviewed the Complaint." If true, then she elected to disregard the statute of limitations defense. Mumm's Report and Recommendations is silent on this defense. He addressed, and considered, only the belated "absolute judicial immunity" and the *Rooker-Feldman* defense.

Judge Lozinski would also know this discrepancy in his ruling, if he had read Petitioner's Opening Brief and Magistrate Mumm's Report and Recommendations. Both these documents are part of the Ninth Circuit file, having been transferred from the District Court. Judge Lozinski was also provided Mumm's

Report and Recommendations, and "Plaintiff's Objections and Recommendations to the Magistrate's Report," consisting of 15-pages that addressed this deficiency, of not considering the statute of limitations defense.

Consequently, the statute of limitations defense it is not part of the Judgment that Judge Cooper signed. And, Judge Lozinski's Ruling based on Judge Cooper's judgment – *is incomplete by its consideration of only Mumm's limited input in his Report and Recommendations – and exclusion of the statute of limitations defense.*

Relevant to their selectively controling selective defenses, are Mumm cancellation of a scheduled hearing without notifying plaintiff, who attended and was informed by Mumm's clerk of the cancellation at the courtroom. And, the cancellation of a second scheduled hearing before Judge Cooper, also without notice, leaving appeal to the Ninth Circuit Petitioner's (Plaintiffs) the only option. Obviously, Mumm and Judge Cooper did not want a recorded public record of the statute of limitations defense.

Appellate Justices have not expressed any opposition to the statute of limitations defense. And, their *equity defense*, that they based on fabricated facts and law, to supersede the statute of limitations defense *has been abandoned*. The "absolute judicial immunity" and *Rooker-Feldman* defenses are no longer relevant.

The statute of limitations violation is the law of this case – and should be enforced.

Conclusion

Appellate Justices Epstein, Suzukawa and Manella had *no jurisdiction* to create an *equity defense* based on fabricated *facts* and *law*. The California one-year statute of limitations barred this lawsuit *ab initio*. The "absolute judicial immunity" defense, and the *Rooker-Feldman* defense – are subordinated by the statute of limitations defense, and have become irrelevant.

Dated: June 8, 2010.

Respectfully submitted,

Don H. Haycock, Petitioner
and Attorney in pro se

Copies to:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
(w/o Petition to U.S. Supreme Court)

Edmund G. Brown
California Attorney General
P.O. Box 944255
Sacramento, CA 94244-2950

Governor Arnold Schwarzenegger
California State Capitol Bldg.
Sacramento, CA 95814
(w/o Petition to U.S. Supreme Court)

Hon. Carlos R. Moreno
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Cockle Printing Company
2311 Douglas Street
Omaha, Nebraska 68102
(Make copies and distribute to U.S. Supreme Court)

Proof of Service

I am Jennifer Errande, a paralegal for the Law Office of Don H. Haycock, and Associates.

I am over the age of eighteen and not a party to the litigation involving this transmittal.

On July 8, 2010 I caused to be transmitted the following document to the addressee and the other parties stated hereon.

> Response to Order of Chief Judge Kozinski, dated June 3, 2010, dismissing complaint of judicial misconduct against Judge Florence Marie Cooper and Magistrate Fredrick F. Mumm, Nos. 09-90210 and 09-90280

I declare that I caused this document to be deposited, on this date, in the United States Postal Service, and mailed by first-class mail to Clerk, of the

Ninth Circuit Court of Appeals; and, to the other parties designated thereon.

I declare under penalty of perjury the foregoing is true and correct. Dated: July 8, 2010.

/s/ Jennifer M. Errande
Jennifer M. Errande